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MEMORANDUM

DATE: March 27, 2003

TO: Council Member Gary Schiff, Chair, Zoning & Planning Committee and
Members of the Committee

FROM: Hilary Watson, City Planner

SUBJECT: Appeal of the decision of the Zoning Board of Adjustment by Darren
Acheson

Darren Acheson has filed an appeal of the decision of the Zoning Board of Adjustment. The appeal is associated with the decision of the Zoning Board of Adjustment to deny the requested variance to reduce the south interior side yard setback from the required 6 feet to zero feet (please note that this was noticed to 1-foot) and a variance to reduce the rear yard setback from the required 6 feet to 1-foot to allow for an existing sport court to remain, a variance to increase the height of an existing fence from the permitted 6 feet to 10 feet that is located in the required south interior side yard and the required rear yard, a variance to reduce the required south interior side yard setback from the permitted 6 feet to 1-foot to allow for an existing lamppost to remain and a variance to increase the height of an existing lamppost from the permitted 8 feet to 15 feet that is located in the required south interior side yard. The actions from the February 26, 2003 Zoning Board of Adjustment meeting are attached.

The appellant is appealing the decision of the Zoning Board of Adjustment to deny the requested variances. The appellant has indicated that this action is being appealed because:

- 1) We believe the game court does not constitute an obstruction under Minneapolis zoning ordinances and is therefore not subject to setback restrictions. With the game court, hard cover on our lot is approximately 66%, similar to the percentage of hard cover with the previous building that occupied the area that is now sport court. However, in order to address our western neighbor's concern over potential erosion, we propose installing a landscaping "channel" that will keep any rainwater on our property and funnel it off our property.
- 2) We believe that the see-through, removable netting does not meet the definition of a fence (that which provides security and privacy), and is designed for ball containment to minimize disruption to neighbors and the Greenway. To address our western neighbor's concern over privacy, we propose to plant ivy vines on the western fence to create a natural privacy barrier.

3) We believe that the light provides safety for the game court. We propose to install shields” on the light and to ensure it conforms to Minneapolis lighting standards for candle power.

At the February 26, 2003 Zoning Board of Adjustment meeting, eight Board members were present. All eight of the Board members voted to deny the variance applications.

HEARING AGENDA

Minutes

February 26, 2003

Minneapolis Board of Adjustment:

Ms. Debra Bloom
Mr. David Fields
Mr. John Finlayson
Mr. Paul Gates
Ms. Marissa Lasky
Mr. Barry Morgan
Mr. Peter Rand
Ms. Gail Von Bargaen
Mr. Richard White - Absent

HEARING

2862 James Ave. S. (BZZ – 1036, 7th Ward)

Darren Acheson has applied for a variance to reduce the south interior side yard setback from the required 6 feet to 1-foot and a variance to reduce the rear yard setback from the required 6 feet to 1-foot to allow for an existing sport court to remain, a variance to increase the height of an existing fence from the permitted 6 feet to 10 feet that is located in the required south interior side yard and the required rear yard, a variance to reduce the required south interior side yard setback from the permitted 6 feet to 1-foot to allow for an existing lamppost to remain and a variance to increase the height of an existing lamppost from the permitted 8 feet to 15 feet that is located in the required south interior side yard at 2862 James Ave. S.

BOARD OF ADJUSTMENT ACTION:

Ms. Bloom motioned to **deny** the variance applications. Ms. Von Bargaen seconded the motion.

ROLL CALL VOTE:

Yeas: Bloom, Fields, Finlayson, Gates, Morgan, Rand, Von Bargaen, Lasky

Nays: None

Board of Adjustment members discussion:

Mr. Gates questioned if the Board of Adjustment should be hearing this item. Applicant felt that the size of the court could not be reduced to be usable. Applicant is already 7 feet on county property. Board of Adjustment should hear this case after the property issue is solved with the county. Applicant would have to acquire the county property to make variances worthwhile. A lease would not work. If applicant tried to sell the property there would be a homeowner locked into a lease with the county.

Mr. Finlayson questioned at what stage the negotiations were with Hennepin County at and a timeline that a continuance would cover without reaching the 60-day maximum.

Staff, Ms. Watson stated that March 14, 2003 would be the end of the 60-days. We could extend that to an additional 60 days or the applicant could waive their rights of the 60 days. The contractor should have obtained a survey prior to constructing this. It is my understanding that Hennepin County will not sell land. Hennepin County will only lease land.

Applicant Statement:

Darren Acheson, 2862 James Ave. S., has lived at this sight for 10 years. We wanted to put a recreational space in our back yard that would be safe. There was a barn building on the property that was unsafe and unsightly. The sport court is a paved court we did not believe that it was an obstruction. In terms of hard cover on our land with the sport court we are under the 75 percent requirement. Sport court is willing to sign an affidavit that they did not think that this required any kind of zoning sign-off. The fence is actually removable ball containment, which is see through netting. We thought it was an amenity that we were putting a fence up that was going to control any objects from going into the neighbor's yard to the west or on to the greenway. We put the light in for the safety of our kids at night. We do have the support of the East Isles Community Association. We have a draft lease agreement with Hennepin County. Hennepin County is waiting for the city zoning issues to be resolved before proceeding with the lease. Hennepin County is not willing to sell the land but willing to engage in a long-term lease.

Board of Adjustment members discussion:

Ms. Lasky stated the Board should look at this as if the applicant came here without having built the sport court. And to remember the sport court situation that was on Cedar that was above the garage. That was denied. Sport courts and lighting mean that people and kids will be playing there all hours of the day and night. Reluctant to put a permanent structure on this home that will encourage noise and light in that neighborhood.

Ms. Bloom stated this is somebody else's property that this is on.

Mr. Gates stated there is no hardship.

Staff, Ms Watson explained to the applicant and Board, there is a table of permitted obstructions in the zoning code. If something is not listed on that table of permitted obstructions, it is not allowed to obstruct any yard anywhere. Sport court may have to be educated about our zoning code.

Mr. Rand questioned type of fence.

Ms. Lasky questioned if the applicant has to remove 7 feet of the sport court would applicant be coming back for a variance for the lighting and fence height.

Staff, Ms. Watson stated all of the variances that are presented apply to applicants' property. The south interior property line does not include the 7 feet on the right of way. That should never have occurred. We are only looking at the set back from the property line. If the Board of Adjustments were to deny the applications the applicant would have to modify the sport court to meet the standards of the code, pull it out of the right of way and the fence will have to be put to the 6 foot maximum. They would also have to remove that 7 feet from the Hennepin County land as well.

Ms. Lasky questioned it is not the sport court that is being denied. It is the fence height.

Staff, Ms. Watson stated the sport court would be 15 feet wide. If an additional 5 feet in length is needed applicant could move it closer to his house rather than the adjacent neighbors house.